

MEMORANDUM OF UNDERSTANDING
FOR A MESA DOWNTOWN CAMPUS DEVELOPMENT AGREEMENT
BETWEEN
BENEDICTINE UNIVERSITY, LISLE, ILLINOIS
AND
THE CITY OF MESA, ARIZONA

NOVEMBER 2011

**MEMORANDUM OF UNDERSTANDING
FOR A MESA DOWNTOWN CAMPUS DEVELOPMENT AGREEMENT**

This Memorandum of Understanding for a Mesa Downtown Campus Development Agreement (the "MOU") is entered into by and between Benedictine University, an Illinois not-for-profit corporation with its main campus located at 5700 College Road, Lisle, Illinois ("Benedictine" or "BenU"), and the City of Mesa, Arizona ("City of Mesa" or "Mesa"), an Arizona municipal corporation. BenU and Mesa are the "parties" to the MOU.

RECITALS

WHEREAS, the City of Mesa issued a Request for Information ("RFI") pursuant to its Higher Education Recruitment initiative, in order to identify institutions of higher education which may be interested in partnering with Mesa to establish one or more new campus locations in Mesa; and

WHEREAS, Mesa's objectives included the recruitment of a private institution and the establishment of a four-year, liberal arts college with its campus in Mesa's central downtown area; and

WHEREAS, Benedictine provided a complete response to Mesa's RFI (Benedictine's "RFI Response") which documented BenU's willingness to partner with Mesa to develop a campus in Mesa's downtown area; and

WHEREAS, the parties' representatives have visited and consulted each other and held discussions directed toward establishing the basis for a partnership through which BenU would establish a private liberal arts college located in downtown Mesa; and

WHEREAS, the result of the parties' visits, consultations and discussions is that, as stated in the letter from Mesa to Benedictine dated November 8, 2011, the parties "mutual[ly] desire to develop a Memorandum of Understanding (MOU) to create a downtown campus for Benedictine University beginning with the City-owned building at 225 East Main Street in Mesa."; and

WHEREAS, the parties reached mutual understandings as to certain terms of the partnership and in order to proceed, the parties intend this MOU to confirm these terms and to state such terms more particularly, as and where appropriate; and

WHEREAS, the parties further intend that this MOU shall be the master guide for their respective planning efforts necessary to implement the partnership, and further intend

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this MOU to be the basis for the parties' preparation of, and mutual consent and agreement to, a definitive development agreement (tentatively styled as the *Mesa Downtown Campus Development Agreement*, the "Development Agreement"), and for any other contracts, leases, submissions to regulatory or governmental bodies or other legal documents which the partnership may require.

AGREEMENT

NOW THEREFORE, it is the understanding of the parties hereto as follows:

I. TERMS OF PARTNERSHIP

A. The parties have agreed in principle on the foundational terms of their partnership, based upon Benedictine's RFI Response, the site visits conducted by both parties, and other communications between the parties. These terms are confirmed and specified by this MOU and are as follows, and in each instance, shall be subject to definitive terms to be stated in the Development Agreement:

1. The BenU branch campus will be known as Benedictine University at Mesa and will be sited in downtown Mesa, in a building owned by Mesa located at 225 East Main Street. Mesa agrees not to sell, lease or offer to sell or lease such building to any entity or individual (other than BenU) for the duration of this MOU, and pending the parties' agreement on a lease for such building (and the Development Agreement).

2. Mesa will lease the building to BenU for a term of fifteen (15) years. The lease will include terms providing for the full abatement of rent for the first twelve (12) calendar months of the lease; step-up rent payments (reasonable in amount and timing); and an option for BenU to purchase the building.

3. Within 120 days, BenU will provide to Mesa the specifications (which shall conform to applicable statutes, ordinances and codes) for the modifications or build-out of the building located at 225 East Main Street. Subsequently, the Parties will meet and determine which improvements will be made by each party. The Development Agreement shall make further provision for the development and submission of the specifications, the management of the work, project related contributions and responsibilities of the parties, and any other related items.

4. BenU will prepare and provide to City of Mesa a plan for BenU's access to, and utilization of, other facilities appropriate for a liberal arts college

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located in downtown Mesa. Such plan shall include but not necessarily be limited to terms for access to the Mesa Performing Arts Center, the Mesa Amphitheater, the Mesa Convention Center, and the Mesa Public Library, for appropriate BenU activities, and access to other facilities owned by Mesa, including without limitation appropriate and sufficient parking, and appropriate athletic facilities.

5. Benedictine shall prepare and submit the applications and any other documents necessary for BenU to receive authorization or approval by the applicable regulatory and governmental agencies, including without limitation the United States Department of Education, the Higher Learning Commission of the North Central Association of Colleges and Schools, and the Arizona Private Postsecondary Education Board. As and where necessary, Mesa shall provide information or documents to BenU and/or the regulatory and governmental agencies, and generally shall provide reasonable assistance and support for BenU's applications and related submissions.

6. Benedictine shall prepare and provide to City of Mesa a plan for BenU to develop partnerships with local educational institutions (including both high schools and community colleges), businesses, civic groups, and other organizations as and where appropriate for the purposes of this MOU. The plan will include, without limitation, partnership development efforts with respect to Mesa Community College and the other institutions collectively known as the Maricopa Community Colleges, the East Valley Institute of Technology (EVIT), and the public and private high schools located in Mesa. To facilitate these efforts, Mesa also shall submit an appropriate recommendation for Benedictine to be granted a seat on the Board of Directors of the Mesa Chamber of Commerce.

7. As stated in BenU's RFI Response, in order to identify the highest priority postsecondary educational needs and to determine the specific academic programs to be offered, BenU will collaborate with Mesa to develop a shared vision, continue and expand dialogue between BenU and Mesa and appropriate constituents of the community, and develop a vision statement and a preliminary strategic plan (with one-, five- and ten-year goals and objectives). BenU's goal is to enroll students for classes beginning in the fall 2013 semester (anticipated to begin in approximately the third week of August 2013). The preliminary strategic plan shall include, among other things, BenU's projections of the number of degree programs to be offered in the first, third, and fifth years of operation of the downtown Mesa campus. (Such projections are set forth in the Addendum entitled "Projections (Preliminary)", attached to this MOU.)

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8. City of Mesa Public Information Office and Department of Economic Development shall coordinate marketing efforts with Benedictine's Office of Marketing and Communications, support and promote BenU as a City of Mesa partner, and provide reasonable assistance and support to BenU for the development of an effective marketing campaign for BenU's campus to be located in downtown Mesa. The parties agree and acknowledge that each party's trademarks may not be used without permission from the other. Mesa shall obtain prior approval from Benedictine's Office of Marketing and Communications (or its designated representative), and BenU shall obtain prior permission from City's Public Information Officer, which permission shall not be unreasonably withheld. BenU shall support and promote City of Mesa as a BenU partner.

9. The operations of BenU's downtown Mesa campus will begin with academic classes and related administrative and academic support functions. Depending upon enrollment growth, operations will expand to include student activities (such as social and athletic activities) and student residential facilities. City of Mesa shall provide reasonable assistance and support to BenU for development of plans for appropriate residential facilities.

10. City of Mesa shall provide reasonable assistance and support to BenU for issuance of tax-exempt financing, including but not limited to serving as the issuer for tax-exempt bonds for BenU's campus in downtown Mesa (subject to any limitations, conditions or restrictions in applicable law).

11. Benedictine has provided preliminary projections of its goals for (a) faculty and administrative staff positions, and (b) student enrollment, in the first, third, and fifth years of operation of the downtown Mesa campus. (These projections are set forth in the Addendum entitled "Projections (Preliminary)", attached to this MOU.)

12. The parties acknowledge that each of the terms described in sections 1 through 11, inclusive, of this paragraph I.A 12 is subject to the parties reaching agreement on specific terms in the Development Agreement .

13. Notwithstanding any other term or provision of this MOU, the parties acknowledge and agree that the requirements of the State of Arizona licensure statute (A.R.S. § 32-3001 *et seq.*) may limit BenU's advertisement for

and recruitment of students in the State of Arizona, prior to issuance of a license to BenU for the granting of degrees and the operation of a degree program.

B. The parties agree that a Development Agreement will be necessary to establish the partnership contemplated by this MOU. The Development Agreement will include definitive terms on the subject matters covered in sections 1 through 11 of paragraph I.A, and the following further terms (among others):

1. Benedictine will appoint an administrator (such as a Campus Manager) with overall responsibility for the operation of the BenU branch campus in downtown Mesa, and will hire appropriate faculty and staff for the campus (as and when permissible in accordance with applicable regulatory requirements). BenU will establish a reasonable preference for hiring individuals residing in Mesa and within a defined local area around Mesa.

2. BenU will provide significant financial incentives for student and community support for the BenU campus.

3. Provision will be made for an on-going means of consultation between and among BenU, Mesa, civic and business leaders and groups, social agencies, and other interested parties, for purposes of developing academic programs best suited to the needs of the greater Mesa community.

4. All financial, leasing and other material commitments of either or both parties (but not including the implementation steps in this MOU) shall be conditioned upon BenU receiving all required regulatory and governmental approvals. Without limiting the generality of the foregoing, the City of Mesa shall not be expected to initiate any construction activity until all such approvals have been granted.

II. IMPLEMENTATION STEPS

A. The parties shall use their best efforts to make the partnership a success and to implement the terms of this MOU, and shall provide reasonable services to accomplish that goal, including appropriate administrative structures, staff and budgetary support. As their respective project leaders, Mesa designates William Jabjiniak (Economic Development Director) and BenU designates Charles Gregory (Executive Vice President).

B. The parties shall collaborate to develop a detailed calendar of milestones for the development of the partnership, including but not limited to issuance of press {00024984.3}

releases. The parties agree that any press release issued by either party concerning the subject matter of this MOU must be mutually agreeable to the parties.

C. The parties recognize that as a result of this MOU, Mesa may be provided with confidential information relating to BenU's business policies, procedures, students, employees, and other confidential information. Neither Mesa nor its employees, agents or officials will disclose any such confidential information without the prior, express written consent of BenU.

III. OTHER TERMS

A. Assignment. Neither party may assign, sublicense or otherwise transfer or delegate any right or obligation in this MOU without the written consent of the other party.

B. No Waiver. No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the party to be charged thereby.

C. Severability. If any term, clause or provision of this MOU is held to be illegal, invalid or unenforceable, or the application thereof to any person or circumstance shall to any extent be illegal, invalid or unenforceable under present or future laws effective during the term hereof, then and in any such event, it is the express intention of the parties that the remainder of this MOU, or the application of such term, clause or provision other than to those as to which it is held illegal, invalid or unenforceable, shall not be affected thereby, and each term, clause or provision of this MOU and the application thereof shall be legal, valid and enforceable to the fullest extent permitted by law.

D. Governing Law. This MOU shall be governed in by the laws of the State of Arizona, without regard to its conflict of laws principles.

E. Complete Agreement. This document shall be the entire understanding and agreement between the parties with respect to the subject matter set forth herein, and all prior agreements, understandings, covenants, promises, warranties, and representations, oral or written, not incorporated herein are superseded hereby.

F. Modifications. No revision or modification hereof shall be effective unless it is in writing and signed by both parties.

G. Notices. All notices and communications required or permitted to be given hereunder shall be in writing and shall be made by personal delivery, sent prepaid by nationally recognized overnight courier, or send by United States certified mail, return receipt requested, postage prepaid. All notices shall be effective upon receipt at the appropriate address as is provided by each party in accordance with this section:

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To Benedictine University:
Benedictine University
Office of Executive Vice President
5700 College Road
Lisle, IL 60532-0900

To City of Mesa:
City of Mesa AZ
William Jabjiniak, Director
Office of Economic Development
20 East Main Street, Suite 200
P.O. Box 1466
Mesa, Arizona 85211-1466

H. Effective Date and Termination. This MOU will become effective on the date it is executed by both parties, and it will continue in effect until: 1) superseded by the definitive development agreement; 2) termination by either party, by giving thirty (30) days advance written notice to the other party; or 3) if neither of the previous conditions occur, December 31, 2012.

I. Calculation of Time Periods. Each time period specified in this MOU shall begin on the day following the date the last party executes this MOU.

IN WITNESS WHEREOF, the undersigned parties, by and through their duly authorized officers, have executed this Memorandum of Understanding between Benedictine University, and the City of Mesa, Arizona.

Benedictine University

City of Mesa, Arizona

William J. Carroll
President

Christopher J. Brady
City Manager

Date

Date

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ADDENDUM
BENEDICTINE UNIVERSITY
Projections (Preliminary)

	<u>Yr 1</u> <u>FY 2014</u>	<u>Yr 3</u> <u>FY 2016</u>	<u>Yr 5</u> <u>FY 2018</u>
Number of Majors	3	8	15
Faculty and staff positions	25-35	50-60	70-80
Student enrollment (Fall)	45-55	275-285	640-650

Note: Projected 1,500+ enrollment by Year 10.

(Revised 11/30/2011)